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Environment & Energy Report

Wednesday, January 27, 2021

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Tougher Toxic Chemical Rules Expected From Biden's EPA

A broader interpretation of the nation's toxic chemicals law under President Joe Biden will mean additional requirements for industry, several attorneys specializing in chemical laws said.

Disclosure, Analysis: Relying on its authority under the overhauled Toxic Substances Control Act, the EPA will make chemical manufacturers provide more information about toxicity, exposure, and other data, the attorneys said. Additionally, broader EPA chemical analyses are likely for new chemicals, as well as existing chemicals, which have long-standing industrial, commercial, and consumer uses, attorneys said.

Uses and Risks: Under TSCA, the EPA must determine whether a new chemical's "intended, known, or reasonably foreseen" uses may put people's health or the environment at undue risk of injury. Erik C. Baptist, a partner in Wiley Rein LLP's

Washington office and a former agency official, said Biden's EPA likely will expand its view of those "reasonably foreseeable" uses, which almost inevitably means orders or rules will restrict new chemicals' production or imports.

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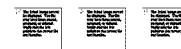
With Ruling, Biden Holds Key to Fate of Dakota Access Pipeline

In the wake of a new court decision affirming the need for additional review, President Joe Biden could move quickly against Energy Transfer LP's Dakota Access pipeline.

Legal Cover: Yesterday, the U.S. Court of Appeals for the District of Columbia Circuit refused to revive a key pipeline easement and provided Biden with fresh legal cover to step in and halt operations.

Federal Trespass: Lacking the easement, Dakota Access is trespassing on federal land and it is up to the new Biden administration to decide to bring an enforcement action addressing the encroachment—or not.

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Leading the News

Pipelines Pledge Emissions Curbs as Biden Targets Fossil Fuels

America's major natural gas pipeline owners committed to paring their carbon footprint and making their own operations emissions-free by 2050. The pledge falls short of covering the emissions of their customers -- which can be vastly larger -- but may help the industry ward off political attacks.

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EPA Violated Chemicals Law With Job Safety Premise, States Argue

The EPA violated the nation's toxic chemicals law by presuming industrial workers who handle methylene chloride would have personal protective equipment at their disposal, a dozen states and New York City argued in court papers.

[Documents Attached](#)

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Groups Challenge Asbestos Evaluation From Trump Administration

Scientists and public health groups started a legal fight Tuesday over the Trump administration's final chemical evaluation of asbestos.

[Petition Attached](#)

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VW Argues Ohio's \$350M-a-Day Emission Fine Is 'Regulatory Chaos'

Ohio's highest court will determine whether Volkswagen AG was acting like a mechanic or a manufacturer when it updated in-car computers to fudge emissions data, and determine if the automaker may pay a \$350-million-a-day fine or escape any state sanction.

[Docket Attached](#)

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Insights

Perspectives from Legal Practitioners, Law Professors and Other Thought Leaders

Censored Science, the CRA, and the End of Meta-Deregulation

By Richard L. Revesz of New York University School of Law

NYU Law Professor Richard L. Revesz says the Biden administration should use the Congressional Review Act to undo a Trump administration final rule that restricts how science can be used in future EPA rulemaking. He contends that in the hands of the Trump administration, the rule could have resulted in a significant number of additional premature deaths and adverse health consequences.

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Considering ESG? Three Ways Lawyers Can Help

By Jillian C. Kim and Bernadette M. Rappold of Greenberg Traurig LLP

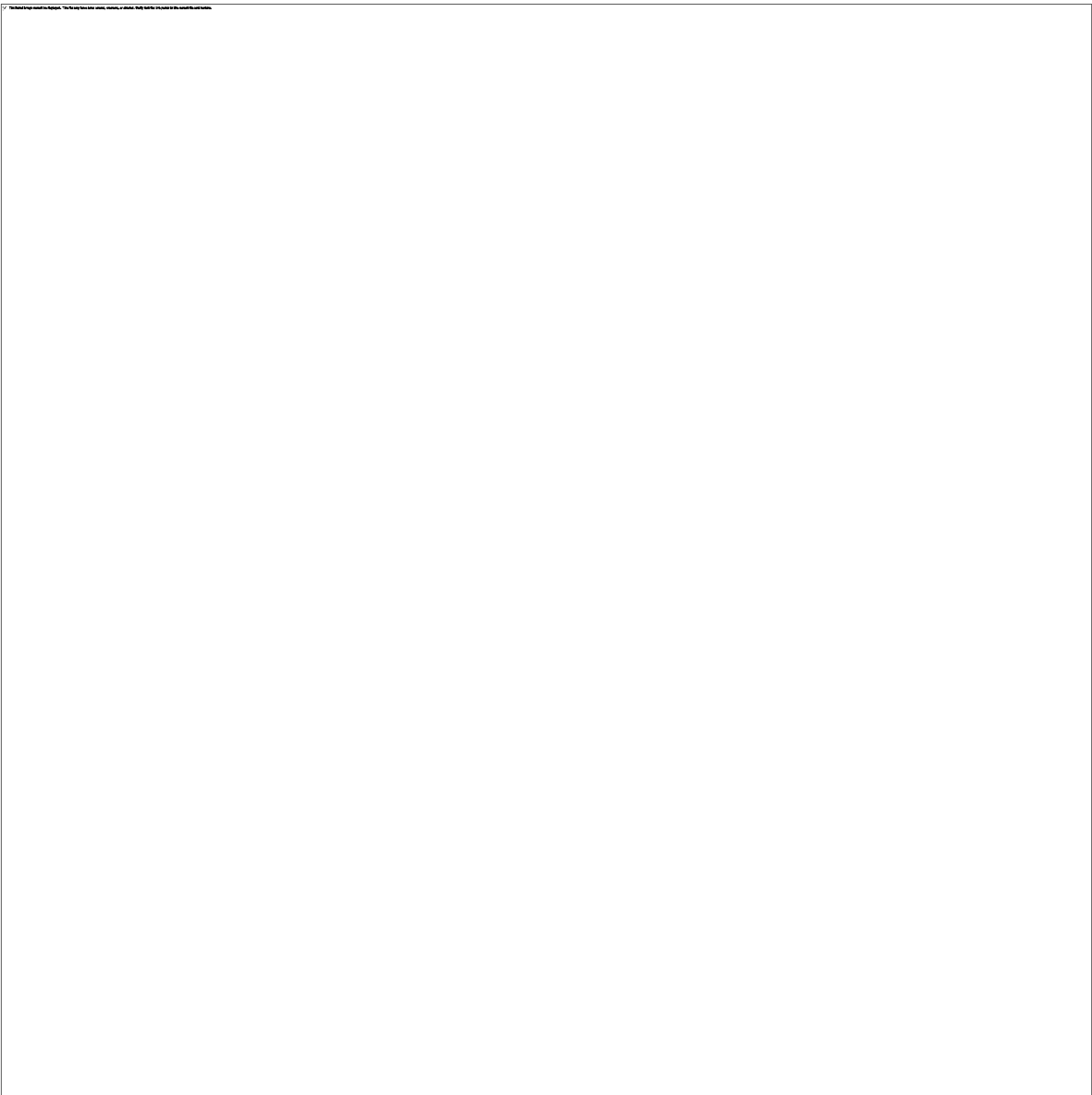
Environmental, social, and governance measures can bolster an organization's financial performance but when mishandled can lead to greater litigation risks,

shareholders in Greenberg Traurig's environmental practice explain. They say lawyers well-versed in various ESG developments may help organizations ensure regulatory compliance and that the appropriate due diligence is conducted prior to securing ESG-based financial commitments.

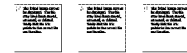
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Chart: Powering Up Battery Cell Capacity

The European Union paved the way for companies including Tesla Inc. and BMW AG to get about 2.9 billion euros (\$3.5 billion) of state aid for battery projects that will strengthen the bloc's position in the race to produce more electric vehicles.



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Climate

Corporations Bought More Clean Power Than Ever Before in 2020

The coronavirus pandemic hasn't stymied the corporate push for clean power.

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Latest Biden Climate Plan Include E-Trucks, Oil Lease Halt (1)

President Joe Biden is set to order fresh action to combat climate change -- with plans for blocking new oil leasing on federal land, prioritizing science in government decision-making and bringing world leaders together to address the threat.

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NextEra, FirstGroup to Electrify School Buses, a Biden Goal (1)

Clean-energy giant NextEra Energy Inc. announced a plan to electrify thousands of school buses, capitalizing on President Joe Biden's goal of accelerating the green transition.

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Mastercard Joins Net-Zero Climate Club With Audacious 2050 Goal

Mastercard Inc. has tightened its corporate climate strategy, now pledging to reach the equivalent of no greenhouse gas emissions by 2050, a goal shared by a quickly growing number of companies and governments around the world.

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Energy & Natural Resources

FERC Seeks to Avoid Lawsuit Over Defunct Constitution Pipeline

Multiple challenges to the Federal Energy Regulatory Commission's authorization of the Constitution natural gas pipeline should be dismissed because the pipeline developer canceled the project, the agency told the Second Circuit.

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Exxon, Shell Face Rating Cuts on Greater Climate Risk, S&P Says

Big Oil suffered a fresh setback after one of the most influential rating companies warned it may cut the credit score of Exxon Mobil Corp., Royal Dutch Shell Plc and a plethora of other major energy companies due to "greater industry risk" associated with climate change.

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BP Gets Pushback From Texas Agency It Urged to Ban Gas Flaring

Last year, BP Plc called on Texas regulators to take bold action to stamp out the routine flaring of natural gas, a harmful environmental practice that's drawn increasing scrutiny from investors.

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PG&E Worker Gets Prison Time for \$82.1 Million Fraud Conspiracy

A former PG&E employee was sentenced to 22 months in prison and ordered to pay more than \$1.4 million in restitution after pleading guilty in connection with an \$82.1 million scheme to steer contracts from the utility provider to his cousin's company.

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Montana's Rosebud Coal Mine Expansion Proceeds Despite Lawsuit

Environmental groups waited too long to seek a court order to block Westmoreland Rosebud Mining LLC's operations at an expanded coal mine in Montana in an effort to save an endangered fish, a federal court in the state ruled.

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Water

EPA Sued Over Conclusions About Drinking Water Chemical's Risks

Three environmental groups are challenging the EPA's final conclusions on the risks posed by 1,4-dioxane, a chemical found in drinking water supplies.

[Documents Attached](#)

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Hazardous Waste

BASF Gets Partial Win in Hudson River Cleanup Costs Case

BASF Corp. beat a bid for reimbursement of Hudson River cleanup costs by a research and manufacturing company, after a federal district court in New York found the request "superfluous."

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N.Y. Residents' Love Canal Cleanup Cases Return to State Court

Occidental Chemical Corp. lost a second attempt to litigate in federal court New York residents' claims of injury and property damage stemming from decades old toxic waste at Love Canal.

[Documents Attached](#)

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Asphalt Company Stuck Litigating Superfund Liability in Missouri

Bridgeton Landfill LLC's bid to recover cleanup costs for waste at a radioactive Missouri Superfund site survived dismissal by a federal district court.

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Chemicals

EPA Urged to Fine Solvay \$434 Million Over PFAS Test Results (1)

The Environmental Working Group [petitioned](#) the EPA on Tuesday to assess \$434 million in civil and criminal fines against Solvay Specialty Chemicals for allegedly failing to report animal and human tests showing the health hazards of PFAS.

 [Petition Attached](#)

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Companies

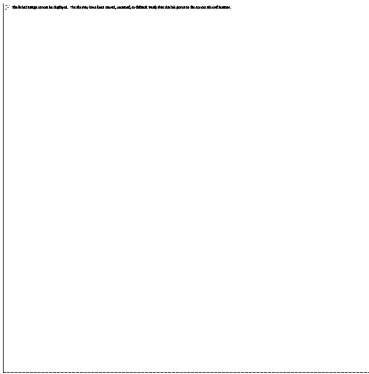
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